

**Testimony of Lee Schwartz**  
**Executive Vice President for Governmental Relations**  
**Michigan Association of Home Builders**  
**Before the House Energy and Technology Committee**  
**June 13, 2007**

Good Morning Mr. Chairman, and thank you for your many kindnesses and the opportunity to appear before this committee.

I want to talk today not about any specific piece of legislation but rather give the committee an understanding of the development of Michigan's energy codes from 1995 through today, what choices were made and why those choices were made.

At the outset, it is important to remember energy codes are not life safety codes. Energy codes set a basic standard, not an optimum standard, for energy use in a home based on economic considerations. Just as the residential code should not require every home to have top-of-the-line granite countertops, solid mahogany hardwood floors or a Sub-Zero refrigerator/freezer in the kitchen or specified brands of lights or plumbing fixtures, energy codes must not allow the pursuit of energy efficiency perfection to get in the way of significant energy efficiency improvements by restricting the use of products and design choices or pricing people out of making energy usage improvements.

Since 1972, Michigan has had a statewide energy code, one that applied throughout the state and one that local units of government could not amend. That Code was the American Society of Heating, Refrigeration and Air Conditioning Engineers' 90A/90B energy code.

In 1995, the state adopted the Council of American Building Officials Model Energy Code. The Michigan Association of Home Builders had concerns about that code but no hard data. We were not willing to oppose the code because of a hunch and so, while expressing reservations, we did not try to stop the adoption of the Model Energy Code.

As we feared, that code turned out to be a disaster for Michigan. It cost far more for the energy savings measures than homeowners would get back in energy savings; it limited the number, size and type of windows and doors a homeowner could have; and it was so complex you needed a computer program to determine whether a home was in compliance. It also harmed Michigan-based insulation and window manufacturers by reducing or eliminating the use of their products. And it led to Michigan job losses.

After months of vigorous debate, the Legislature overwhelming passed a measure, Public Act 270 of 1995 to repeal the Model Energy Code and prevent its use again in Michigan. This legislation was supported by a majority of Democrats and Republicans serving in the Legislature at the time. That legislation required the department to form a Michigan-based committee to write an energy code tailored to Michigan's needs and to make sure

the new code was cost-effective. It left the decision of what would be cost-effective up to the committee.

In January of 1996, in keeping with the requirements of the law, an eleven-person committee was formed to write a new, cost-effective energy code. After careful and reasoned deliberation, and with only the representative of the fiberglass industry in opposition, the committee created the very same cost-effective requirement now found in the Construction Code Act.

While this is overly simplified, in order to increase energy efficiency measures you have to start with the values of the energy code that is being amended and, using simple payback, show each proposed increase in energy efficiency will pay itself back in seven years. If the cost of going from an R-13 wall to an R-21 wall is \$2,927 then that change has to save the homeowner \$418.14 a year. Our calculations show that change, proposed by the department in the new code, in a 1,629 square foot two-story Cape Code home will save only \$17 a year and take 58.4 years to payback. That kind of uneconomical payback in the name of energy efficiency is why the original energy code committee wrote these cost-effective standards in the first place. It's also why the representative of the fiberglass insulation industry voted against those cost-effective standards since, with the standards in place, fiberglass manufacturers lose their ability to force the increased use of their product in Michigan and the decreased use of their competitors through non-cost-effective code requirements.

The second thing the committee did in creating the state's cost-effective standards was to require that a person who could qualify to buy the home before the new energy efficiency standards were in place had to be able to qualify to buy the home after the measures had been adopted. That was intended to make sure the state's goal of increasing energy efficiency in homes didn't price people out of the market and force them to live in older energy hog homes.

Using those requirements as a guideline they wrote the Michigan Uniform Energy Code we are under now, fully understanding the code would be updated every three years but any changes had to meet the cost-effective criteria they had written.

Changes in or removal of those cost-effective standards would harm your constituents by making them pay more than they would save for energy efficiency measures and would price many of them out of the market for new homes. On a state level, for every \$1,000 increase in the price of a home, 10,000 people are priced out of the market for that home and are forced into less energy efficient dwellings.

It would also harm many Michigan-based firms as large multi-national corporations used energy code requirements they got into the International Energy Conservation Code to gain market share at the expense of their competitors. This would mean still more Michigan job losses.

When the Single State Construction Code was passed, again with a majority of Democrats and Republicans voting for the measure, the cost-effective standards from the committee were written into law. Also written into law was a list of what codes Michigan would use. Although the International Energy Conservation Code was available, the Legislature chose not to allow its use and instead very plainly stated we would continue to use our Michigan-specific code. Again this was done to keep full control of Michigan's energy code here in Michigan which would allow us to protect Michigan consumers and businesses while still significantly increasing the energy efficiency of new homes in Michigan.

In 2002, the Department of Labor and Economic Growth put together the 2002 Energy Code Ad Hoc Committee to update the Michigan Uniform Energy Code. After 18 months the committee, which included voting members from both Guardian and Dow, unanimously approved changes to the state's energy code. An April 2003 Tom Martin memo on those changes has been distributed to you as has a subsequent May, 7, 2003 memo indicating the Department of Labor and Economic Growth director David Hollister had accepted the unanimous recommendations of the department's own committee and that they should be in effect by the end of 2003.

As you all know, that didn't happen. No public hearing was held until close to the end of December. At that hearing, Guardian and the Midwest Energy Efficiency Alliance testified against the consensus agreement and demanded the state move directly to the International Energy Conservation Code without any changes. The administration dropped its plans to promulgate the unanimous recommendations of its own committee despite their own findings the consensus code changes provided a significant increase in energy efficiency and still comply with the cost-effective requirements in the law.

For nearly a year, we tried to explain the consequences of such a move to the department and the Administration, including the fact the MAHB would have no choice but to sue to enforce the law and to protect Michigan consumers and businesses. Our efforts to reach a compromise were in vain and we finally were forced into court where the judge indicated the state could not adopt the International Energy Conservation Code.

Since then the state and the intervener defendants have filed nearly ten motions to postpone the trial, you have a history of the lawsuit before you.

Most recently, on March 2<sup>nd</sup> of this year, the home builders made a settlement offer to the defendants but, three months later, we have yet to receive any response.

The MAHB is committed to improving energy efficiency of the homes we build and add on to but are equally committed to making sure people get the necessary return in savings from those improvements and that Michigan companies are not harmed by those improvements.

Before acting on any changes to Michigan's energy code you should think about how it will affect your constituents.

You shouldn't set the bar so high, with costly upgrades and so little actual return in fuel bills that you prevent your constituents from buying a new home or adding on to, repairing or renovating an existing one.

You shouldn't adopt a code which discriminates against and harms Michigan businesses and costs Michigan jobs while rewarding large multi-national companies for their manipulation of an energy code to their proprietary benefit.

Again, I thank you for the time to appear before this committee and will take any questions you have.

Cost-effective" means, using the existing energy efficiency standards and requirements as the base of comparison, the initial installed costs of the proposed energy efficiency standards and requirements will exceed the annual energy cost savings of the requirements of the proposed rules based upon an incremental multiyear analysis. All of the following provisions apply:

- (i) The analysis shall take into consideration the perspective of a typical first-time home buyer.
- (ii) The analysis shall consider benefits and costs over a 7-year time period.
- (iii) The analysis shall not assume fuel price increases in excess of the assumed general rate of inflation.
- (iv) The analysis shall assure that the buyer of a home who qualifies to purchase the home before the addition of the energy efficient standards would still qualify to purchase the same home after the additional cost of the energy-saving construction features.
- (v) The analysis shall assure that the costs of principal, interest, taxes, insurance, and utilities will not be greater after the inclusion of the proposed cost of the additional energy-saving construction features required by the proposed energy efficiency rules as opposed to the provisions of the existing energy efficiency rules.



# **Michigan Association of Home Builders**

## **Home Builders Support Energy Efficiency While State Action Delays Energy Savings For Fourth Year**

The State of Michigan continues to spend taxpayers' money to delay greater energy efficiency in home construction despite rising energy costs.

For 18 months, starting in 2002, the Michigan Association of Home Builders (MAHB) participated on a state committee charged with developing changes to the Michigan Uniform Energy Code (MUEC) to make it even more energy efficient. Appointed by the Michigan Department of Labor and Economic Growth (DLEG), the committee included a wide cross section of industry representatives from consumer, environmental, utility, builder, insulation companies, and the state energy office. After months of hard work and many compromises, the committee, which included representatives from both Guardian and Dow, unanimously agreed to revised, more efficient yet still cost-effective energy code changes to the MUEC. The DLEG accepted the consensus changes to the MUEC and said they would be in use by the end of 2003.

The DLEG then unilaterally scrapped its own committee's work and, without going back through the committee process, adopted an entirely new code, one desired and supported by environmental groups and various multi-national corporations that produce high-end insulation and windows in locations around the world and one which goes well beyond the minimum standards the law requires for starter homes. Instead this “preferred” code applies the same requirements to small, one-bedroom starter homes as it does to luxurious multi-million dollar mansions. This is the code Dow Chemical and Guardian Industries are calling on the state to adopt.

This new code, the International Energy Conservation Code (IECC), does not meet the requirements of state law. In fact, it's the latest version of the code the Legislature specifically repealed in 1995 and then outlawed in 1999 as not being right for Michigan.

To make sure low-income or first-time homebuyers are not priced out of the market, Michigan law says that any new costs associated with energy code changes must pay for themselves in energy savings within seven years. If it costs an additional \$4,500 for higher R-value insulation, windows or construction, there must be at least \$643 per year in energy savings. This is one of the five cost-effectiveness tests any changes to Michigan's current energy code must meet. The department's own analysis stated *"It is by no means clear that the requirements of the IECC would meet the statutory cost effectiveness test established by the Legislature."*

Going into court to protect first-time homebuyers was a last resort. We tried to the best of our ability to work with the Granholm Administration to create a "win-win" solution on this issue only to have our efforts continuously rebuffed.

In early 2005, Circuit Court Judge Draganchuck agreed with the MAHB this new code would cause irreparable harm to homebuyers if it went into effect and was later found to be illegal at the trial.

Yet, each time the trial date neared, the co-defendants filed motions that put off the trial, further delaying the adoption of cost-effective energy code changes for Michigan that should have been in effect in 2003. On October 24, 2005 the co-defendants were successful in having the starting date for the energy code trial pushed back from October 31, 2005 to January 3, 2006. On December 22, 2005 these same "energy efficiency" advocates were successful in having the January 3, 2006 trial date postponed indefinitely, all the while knowing full well the court's injunction would stay in place.



Even the state's own experts say the consensus code changes, "*...provide a significant increase in energy efficiency compared to Michigan's current requirements. In Marquette the proposed changes bridge 84% of the gap (between Michigan's current requirements and the IECC)...*"

On March 2, 2007 the MAHB made yet another step toward increasing residential energy efficiency in Michigan, this time by making a settlement offer to the defendants. More than three months have passed without a response to our offer.

It's past time for the state to stop stalling, adopt its own committee's consensus energy code changes and allow Michigan families to enjoy the cost-effective energy improvements to the MUEC mandated by Michigan law.



**From:** Brown, Larry [mailto:lbrown@nahb.com]  
**Sent:** Tuesday, May 15, 2007 11:34 AM  
**To:** Lee Schwartz  
**Subject:** RE: Just a somewhat gentle reminder

Lee, It has come to our attention that NAHB's position on the ICC International Energy Conservation Code (IECC) may be misrepresented.

Per your inquiry, NAHB does not support the adoption of the IECC without amendments that provide a cost-effective installation to the homebuyer.

NAHB policy states, in part, that NAHB "supports energy codes and standards if the requirements are based on the economic perspective and time horizon of the first buyer and other criteria as might be established by NAHB."

There needs to be a reasonable payback period to home buyers that should be integrated into any provision. NAHB does not consider the IECC, un-amended, to meet those cost-effective standards.

In support of NAHB policy NAHB does participate in the development of all the I-codes, including the IECC. But, that participation does not equal approval.

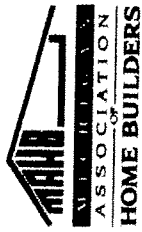
There may have been a misunderstanding of NAHB's support of a particular position on IECC Proposal EC16-04/05 during the 2004-05 ICC Code Development Cycle. The support of NAHB's Public Comment (position) on EC-16 was not a blanket expression of support of the IECC. It was intended to correct floor modifications offered by the North American Insulation Manufacturers Association (NAIMA) that raised issues both of cost returns of 40 to 90 years, and other issues regarding using the code to effectively mandate the use of proprietary products to achieve code compliance. That may have led to the manufacturers of otherwise competitive products being at a severe disadvantage in the marketplace.

I hope this information is of help. If needed, a follow-up letter can be provided.

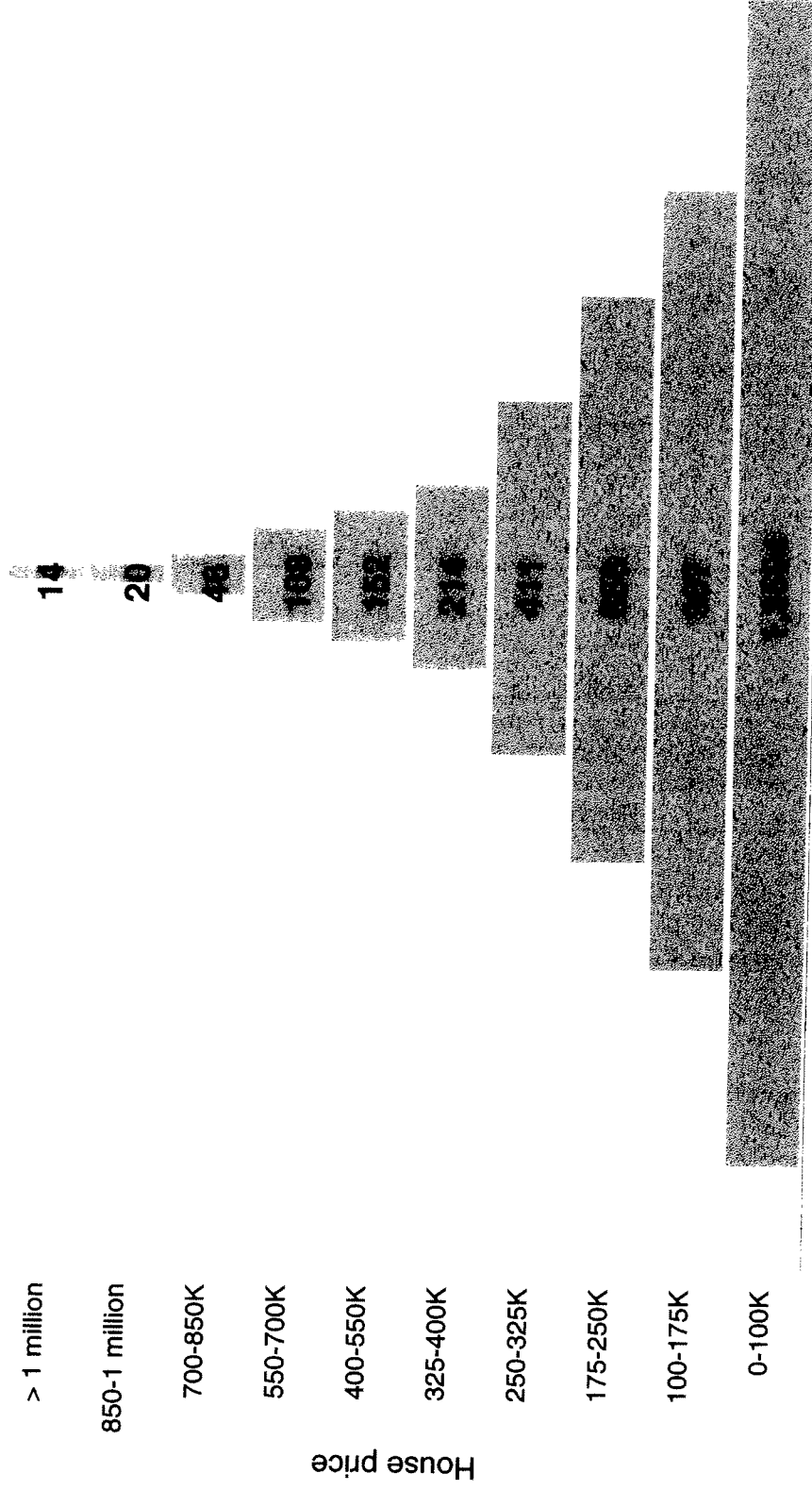
If you have any questions, please do not hesitate to contact me at any of the numbers shown below.

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# Michigan Households (in Thousands) by Highest Priced Home They Can Afford Based on Income: 2005



Source: Calculations by the National Association of Homebuilders Housing Policy Department, based on income data from the 2005 American Community Survey, U.S. Census Bureau



## Households Priced Out of the Market for a New Home in 2005, by Metro Area

Metro area	Estimated median price of a new home	Income needed to afford the home	Total number of households in the metro area	Priced out by an interest rate increase (5.75%-6.00%)	Priced out by a \$5,000 increase in the house price
Ann Arbor, MI PMSA	265,000	75,015	220,181	2,583	2,193
Benton Harbor, MI MSA	185,000	51,603	63,631	652	779
Detroit, MI PMSA	200,000	57,835	1,670,923	16,392	18,832
Flint, MI PMSA	170,000	48,444	170,560	1,823	2,428
Grand Rapids--Muskegon--Holland, MI MSA	165,000	46,423	399,385	4,472	6,059
Jackson, MI MSA	150,000	41,446	60,727	657	961
Kalamazoo--Battle Creek, MI MSA	155,000	44,165	168,679	1,808	2,640
Lansing--East Lansing, MI MSA	175,000	50,840	165,306	1,876	2,447
Saginaw--Bay City--Midland, MI MSA	155,000	44,267	150,469	1,522	2,228

## **Proposed Amendments to Michigan Uniform Energy Code**

### ***Windows***

- A) For glazing up to 15% of gross exterior wall area, the standard will be changed from center of glass R 1.9 to total unit R 1.85.
- B) For glazing from 15-25% of gross exterior wall area, the standard will be changed from center of glass R 2.5 to total unit R 2.5.
- C) For glazing above 25% of gross exterior wall area, the builder will have the option of either using windows that have at least a 3.3 R value (.30 U) or conducting a systems analysis.

### ***Basement Insulation***

Basement insulation will be required as follows:

Region I—R5 Full Wall or R 10 Half Wall (top half)

Region II—R 5 Full Wall or R 10 Half Wall (top half)

Region III—R 10 Full Wall

### ***Duct Insulation/Sealing***

Ducts in unconditioned spaces will be required to be insulated and sealed as provided by standards contained in nationally recognized energy codes. This would set the standard for ducts in unheated spaces at R-5 and outside of a building at R-8. The provision would also coordinate this standard and the standards for pipe insulation with the Mechanical Code.

### ***Additions***

Additions would have to comply with the provisions of the MUEC.

### ***Home Energy Ratings***

Home energy ratings would be a helpful compliance tool. The code should contain language providing for the acceptance of home energy ratings for prescriptive and systems analysis approaches to compliance.

sufficient votes in the Legislature to override a gubernatorial veto of a repeal of a strong energy code.

Although there are strong arguments for adopting the IECC, there are other factors to consider.

- If the consensus recommendations are promulgated as rules, Michigan can have substantially increased energy standards for new homes by the end of the year.
- Under the act, energy code changes must be proven to be cost effective. It is by no means clear that the requirements of the IECC would meet the statutory cost effectiveness test established by the Legislature. This provision was written into the law in 1995 when the Legislature repealed the adoption of the Model Energy Code in response to arguments from the homebuilders that the requirements were not cost effective.
- Even if we document that the requirements of the IECC are cost effective, the homebuilders are very likely to fight this issue in the courts as well as the Legislature. Litigation could conceivably hold up any energy efficiency improvements for years.
- Although MEC is correct that Illinois, the last state in the region without a statewide residential energy code, is considering adoption of the IECC, the bill was defeated by a 59-47 vote in the Illinois House on March 26. I have attached a study conducted last summer that compares residential energy codes in the Great Lakes region.

cc David C. Hollister  
Dennis Sykes





JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
LANSING

DAVID C. HOLLISTER  
DIRECTOR

## Memorandum

**Date:** April 18, 2003  
**To:** Bob Swanson  
**From:** Tom Martin  
**Subject:** Revised Residential Energy Code Requirements

I have attached the consensus recommendations of the Residential Energy Code Committee. All members of the committee agreed to these changes (See attached committee list). The proposed changes make significant changes in Michigan's energy code for residential buildings.

- For the first time the standard for windows in Michigan will measure the whole window rather than the center of glass.
- Also for the first time basement walls in all new homes constructed in Michigan will be required to be insulated.
- The current exemption for additions will be deleted.
- Ducts in unconditioned spaces (e.g. garage, attic) will be required to be insulated and sealed.

This is a consensus recommendation. I think it's fair to say that no one was entirely happy with everything in the proposal. The homebuilder representatives were very reluctant to support the basement insulation requirements. Guardian, Dow, and the consumer representative would have likely preferred to adopt the International Energy Conservation Code (IECC).

This proposal provides a significant increase in energy efficiency compared to Michigan's current requirements. We ran some rough numbers on the proposal and estimate that the proposed changes bridge 72% of the gap between Michigan's current requirements and the IECC in Lansing. In Marquette the proposed changes bridge 84% of the gap.

There are groups out there who will argue that the proposed energy efficiency improvements are not sufficient. They will argue that Michigan should be adopting a recognized national standard, just as we did with commercial buildings. Finally, they will argue that the political dynamic has changed and that there are not

## Lee Schwartz

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**From:** Martin, Tom (CIS) [TMarti@michigan.gov]  
**Sent:** Wednesday, May 07, 2003 11:26 AM  
**To:** grwilliamson@dow.com; pat@urbanoptions.org; building@summittwp.com; davidzbuilders@yahoo.com; koponenarch@aol.com; davidzbuilders@yahoo.com; paullaroe@earthlink.net; kaufman@dteenergy.com; mrozowk@msu.edu; glincoln@guardian.com; thballard@dow.com; Sarver, John H (CIS)  
**Cc:** Lee Schwartz  
**Subject:** Residential Energy Code  
**Attachments:** Energy Code Agreement (Revised).doc; Energy Code Recommendations Transmittal Memo.doc



Energy Code  
green (Revised).doc; Energy Code Recommendations Tr.

I met with Director Hollister on Monday. I am pleased to report that the director has accepted the committee's consensus recommendations and has asked Henry Green to incorporate the recommendations in the current building code revision. It is hoped that the new requirements will be in effect by the end of the year.

I have attached a copy of the proposal that was submitted to Director Hollister along with a brief transmittal memo I drafted following our last meeting.

Thanks again for your help on this project.

<<Energy Code Agreement (Revised).doc>> <<Energy Code Recommendations Transmittal Memo.doc>>

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Incoming mail is certified Virus Free.  
Checked by AVG anti-virus system (<http://www.grisoft.com>).  
Version: 6.0.707 / Virus Database: 463 - Release Date: 6/15/2004

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No virus found in this incoming message.  
Checked by AVG Anti-Virus.  
Version: 7.0.300 / Virus Database: 265.6.9 - Release Date: 1/6/2005

**Status of**  
**Michigan Association of Home Builders v David C. Hollister, et. al.**  
**June 13, 2007**

The issue of statutory construction involved in the litigation involves the basic question of how far the Executive Branch may vary from the express direction of the legislative branch.

In 1995, the Legislature repealed the Council of American Building Officials' Model Energy Code. At the same time it adopted amendments that took away DLEG's discretion to choose an energy code. The Legislature also defined the goals and process for writing a new state-specific energy code for Michigan. This resulted in the creation and adoption of the Michigan Uniform Energy Code (the "MUEC"), rules that became effective March 31, 1999.

In 1999 PA 245, the Legislature brought further certainty by specifically naming all of the model codes that, like the MUEC, taken together would comprise the Single State Construction Code. The International Energy Conservation Code was specifically rejected by the Legislature in favor of the Michigan-created MUEC.

The Legislature empowered the Director of DLEG to make amendments, additions or deletions as the Director determines appropriate for any of the specified codes. Each of the codes was to be evaluated for revisions or modifications every three years, in conjunction with the three-year revision cycle of model building codes. For the MUEC, this periodic review was designed to peruse "ever-improving, cost-effective energy efficiencies."

The Executive Branch has chosen not to make amendments, additions or deletions to the MUEC. Instead, it contends it has the authority to ignore the Legislature and to substitute a national model code, the latest version of the energy code the Legislature repealed in 1995, in place of the Michigan-developed and legislatively-required MUEC. The Executive Branch has now adopted the energy efficiency rules of Chapter 11 of the International Residential Code, which contains the residential requirements of the International Energy Conservation Code (the "IECC").

**February 4, 2005**

The MAHB files suit in Ingham County Circuit court to block enforcement of the IECC.

**February 24, 2005**

The Circuit Court rules in favor of the MAHB stating "*Plaintiff (MAHB) has established a likelihood of success on the merits, in that defendants lack the authority to amend the Michigan Uniform Energy Code by adopting, in substantial part, [the IECC].*"

**February 28 2005**

The Circuit Court issues a preliminary injunction against enforcement of the IECC pending further proceedings in the lawsuit. A trial date is set by the Circuit Court for October 31, 2005.

**April 25, 2005**

The Michigan Court of Appeals denies a motion from the DLEG to have the injunction against the enforcement of its proposed energy code immediately lifted.

**May 11, 2005**

The Circuit Court grants a motion to intervene as defendants filed by the Michigan Community Action Agency Association, the Michigan Environmental Council and the Midwest Energy Efficiency Alliance out of Chicago. The intervening defendants will be represented by Don Kesky of the Lansing office of Clark & Hill.

**October 20, 2005**

A motion is filed by the intervening defendants to permit Christopher G. Mackaronis, attorney with the Washington D.C. law firm Brickfield, Burchette, Ritts & Stone, P.C., to join the case as one of the lawyers for the intervening defendants. His law firm represents the multi-national corporation Cardinal Glass at the IECC and other code hearings before the International Code Council.

The same day, eleven days before the trial is to begin, DLEG and intervening defendants file a series of motions to preclude testimony from any of the six witnesses called by the MAHB as well to block any of the studies on cost-effectiveness and the effect of the IECC on first-time home buyers being entered by the MAHB.

DLEG and the intervening defendants also submit a motion for summary disposition of the case without trial on the grounds the Circuit Court does not have subject-matter jurisdiction to decide the merits of MAHB's claims.

**October 24, 2005**

The starting date for the energy code trial is pushed back from October 31, 2005 to the next workable date on the judge's calendar, January 3, 2006 as briefs are filed on the state and intervening defendants' motions.

**December 16, 2005**

The Circuit Court hears and decides the pre-trial motions. DLEG and the intervening defendants' motion for summary dismissal is denied as is their motion to block the court from hearing the testimony of any of the witnesses for the MAHB or accepting any of the MAHB's exhibits.

**December 22, 2005**

The pretrial scheduling conference to finalize the length and date of the trial is held. All of the attorneys for both sides are present at the conference and none raises any objections to the scheduling. Pending settlement of one trial ahead on the calendar the trial will start January 3, 2006.

At 4:55 PM, less than an hour after the trial date was set, the MAHB receive a hand-delivered copy of the defendant's motion in Circuit Court to stay the start of the trial pending appeal to the Court of Appeals of the Circuit Court's decisions of the week before.

The defendants' motion to postpone the trial was filed before the scheduling conference took place. Defendants did not inform any of the other parties, including the judge, of its existence during the scheduling conference.

**December 28, 2005**

The defendants file an emergency application for leave to appeal, a motion for stay, and other supporting pleadings with the Michigan Court of Appeals.

**December 29, 2005**

The Circuit Court grants the defendants' motion for stay and postpones the trial until the Court of Appeals rules on the requested leave to appeal.

**January 13, 2006**

The Michigan Court of Appeals grants the defendants' motion for leave to appeal. This decision by the Court of Appeals has two practical effects. 1. It keeps the injunction against enforcement of the IECC in place. 2. It postpones any actual trial in the Circuit Court until the

Court of Appeals has ruled on the issues before it. This, of course, pushes an improved energy code for Michigan's citizens that much further into the future.

**April 7, 2006**

The Court of Appeals composes a three-judge panel to hear the defendants' motions. There is no legal timetable for the scheduling of oral argument or for the Court of Appeals to issue its decision after the arguments.

**May 10, 2006**

Well past the court-imposed deadline for such motions, the defendants file a motion in the Court of Appeals asking it to "*expedite oral arguments and resolution of this appeal.*"

**June 6, 2006**

The Michigan Court of Appeals issues a single sentence denial ("*The motion to expedite is DENIED.* [Emphasis in original]") to the motion to expedite consideration and resolution of the defendants' appeal.

**March 2, 2007**

In an effort to resolve the impasse and move energy efficiency forward in Michigan, the MAHB presents defendants, under the court rules, with MAHB's settlement proposal on Friday, March 2.

**June 5, 2007**

Attorneys for all parties in the case appear before the Michigan Court of Appeals for oral arguments on the defendants' motions. The Presiding Judge indicates that, due to various cuts made in the Court of Appeals budget by the other two branches of government, the panel will not hear oral arguments. Instead, legal counsel are told they are present to answer any questions the judges may have with respect to their cases. Fourteen appeals, including the defendants', are completed in 35 minutes.

**June 13, 2007**

The Michigan Association of Home Builders still has not yet received a formal response to its settlement offer.



## MICHIGAN ENERGY CODE HISTORY 1995- 2007

*April 1995*

Council of American Building Officials (CABO) Model Energy Code (MEC) is promulgated in Michigan. It replaces the ASHRAE 90A/90B standard being used. MAHB expresses grave concerns over its impact on new homes and additions but has no empirical evidence to offer and does not oppose its adoption.

*July 1995*

CABO MEC takes effect. MAHB concerns are correct. The energy savings measures mandated by the MEC cost significantly more than they will save in energy; they severely restrict design choices in Michigan including the number and size of windows in new homes and are being applied to additions even though promises were made it would not.

*September 1995*

Senate Bill 719 introduced to repeal MEC adoption and require “cost-effective” energy codes in Michigan.

Vigorous debate ensues in the committees and on the floor of both chambers as national energy conservation groups such as the Alliance to Save Energy, the Building Codes Assistance Project and the Responsible Energy Codes Alliance along with state organizations such as the Michigan Environmental Council begin a major lobbying effort in Michigan hiring several prominent local multi-client lobbying and public relations firms and several consulting firms to produce reports. The debate carries over into radio, television and newspapers as well.

**SB 719 passes Senate 33 to 2, passes House 67 to 39, signed by governor January 7, 1996. Becomes Public Act 270 of 1995.**

*January 1996*

The State Construction Code Commission’s Energy Code Ad Hoc Committee is formed and charged with writing a new, cost-effective energy code.

*February 6, 1996*

Department of Consumer and Industry Services Energy Code Ad Hoc Committee holds first meeting.

*April 11, 1996*

The committee rejects the suggestion from the Alliance to Save Energy to use “*a sophisticated, intertemporal general equilibrium modeling approach including environmental and health damages caused by fossil fuel consumption,*” to determine cost-effectiveness. Instead, by a vote of 10-1 with only the representative of the fiberglass insulation manufacturers voting in opposition adopts the cost-effective standards found in Michigan law today.

*July, 1996*

Ad Hoc Committee adopts Michigan Uniform Energy Code Proposal of insulation values and zones. Work begins on writing code language.

*April 17, 1997*

Ad Hoc Committee adopts proposed code language to implement Michigan Uniform Energy Code.

*March 2, 1998*

Public hearing is held on proposed MUEC. More than 1,200 comments are entered into the record during the public hearing and the public comment period

*November, 1998*

CIS sends approved copy of MUEC to Office of Regulatory Reform for promulgation processing.

*December 9, 1998*

Joint Committee on Administrative Rules gives unanimous approval to MUEC.

*March 31, 1999*

New Michigan Uniform Energy Code (MUEC) goes into effect.

*December 31, 1999*

Governor signs Senate Bill 463, now Public Act 245 of 1999, the Stille-DeRossett-Hale Single State Construction Code Act.

PA 245 requires the Single State Construction Code to consist of International Residential Code, International Building Code, International Mechanical Code, International Plumbing Code, National Electrical Code and **Michigan Uniform Energy Code** with amendments, additions, or deletions as the Director determines appropriate.



Language referring to the MUEC was specifically added to the law to prevent a future administration from adopting a "national standard" energy code to replace the MUEC.

Throughout the debate over SB 463 the supporters of non-cost effective energy codes continued to oppose the energy code sections of the bill. The measure was approved by the Senate by a vote of 38-0 and by the House on a vote of 68-35.

*July 2001*

First edition of the Single State Construction Code is printed. Chapter 11, Energy Efficiency, of the Michigan Residential Code book states "Buildings shall be designed and constructed in accordance with the Michigan Uniform Energy Code. The MUEC is reproduced at the end of the book after the appendixes and index.

*July 2002*

The Department of Consumer and Industry Affairs forms the 2002 Energy Code Ad Hoc Committee to revise the MUEC.

CIS amends the MUEC to adopt ASHRAE 90.1 to comply with Federal Energy Policy Act.

The act requires adoption of ASHRAE 90.1 as the code for commercial buildings. It does not require the adoption of **any** energy code for residential buildings. There is no penalty for not adopting the IECC as the state's residential code.

*January, 2003*

Ad Hoc Committee stops all action on code revisions until new administration gives its approval to continue.

*May 2003*

The 2002 Energy Code Ad Hoc Committee is informed by DLEG Director Hollister has **"accepted the committee's consensus recommendations and has asked Henry Green to incorporate the recommendations in the current building code revision. It is hoped that the new requirements will be in effect by the end of the year."**

*December 15, 2003*

Public Hearing on MUEC changes takes place.

*February 2004*

DLEG Director David Hollister reverses May 2003 decision to accept Ad Hoc Committee consensus recommendations and announces intent to adopt the International Energy Conservation Code as Michigan's new residential energy code.

*June 24, 2004*

Public hearing on DLEG second version of MUEC. The MAHB reads and submits a letter from our attorneys informing department adoption of IECC is illegal under Michigan law and that the MAHB is prepared to file suit to enforce Michigan law. MAHB provides as part of the public hearing testimony a study done by MaGrann Associates of New Jersey showing the DLEG study on cost-effectiveness *"falls short in demonstrating the (cost-effective) provision of Act 230."*

*July 13, 2004*

Office of Policy and Legislation within the Department of Labor and Economic Growth is formally notified of the intent of the MAHB to sue to block implementation of the IECC.

*July 14, 2004*

State Construction Code Commission is formally notified of the intent of MAHB to sue to block implementation of the IECC.

*July 15, 2004*

Office of Regulatory Reform Director is formally notified of the MAHB intention to sue if the Administration promulgates the IECC.

*December 2004*

DLEG promulgates the International Energy Conservation Code with an effective date of February 28, 2005.

*February 4, 2005*

The MAHB files suit in Ingham County Circuit court to block the new energy code. The court heard the MAHB's request for a preliminary injunction blocking any enforcement on the energy code on February 24, 2005.

The court ruled in favor of the MAHB (*"...the Plaintiff (MAHB) has established a likelihood of success on the merits, in that Defendants lack the authority to amend the Michigan Uniform Energy Code by adopting, in substantial part, Chapter 11 of the*

*International Residential Code...*") and, on February 28 2005, issued a preliminary injunction against enforcement of the code pending further proceedings in the lawsuit.

